

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Amendments to Commission Publishing Rules

Docket No. RM2016-5

ORDER CLOSING DOCKET

(Issued June 7, 2016)

I. BACKGROUND

On January 20, 2016, the Postal Regulatory Commission (Commission) established a rulemaking docket pursuant to its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Pub. L. 109-435, 120 Stat. 3198 (2006), to consider amendments to the Commission's rules appearing in 39 C.F.R. part 3020 concerning product lists.¹ The effect of the proposed amendments were to: (1) no longer require the Commission to publish Federal Register notices of Postal Service proposals to modify the market dominant or competitive product lists; and (2) remove the explicit requirement that the Commission provide an opportunity to comment on

¹ Order No. 3039, Notice of Proposed Rulemaking Regarding Minor Amendments to Commission Rules Regarding Proposed Modifications to the Mail Classification Schedule, January 20, 2016.

such proposals. The genesis of these proposals was an attempt to reduce duplication of effort and generally streamline the process for review of Postal Service requests.²

II. SUMMARY OF COMMENTS

The Association for Postal Commerce (PostCom), the Public Representative, and the Postal Service commented on the proposed rule amendments.³

PostCom. PostCom argues that “by eliminating the requirement that the Commission call for comments after initial publication of a change in the product lists, the Commission has deprived mailers of an important opportunity to voice concerns that the proposed changes do not comply with the law.” PostCom Comments at 1. PostCom urges the Commission to “retain the requirement that the Commission establish a period for public comment when noticing a proposed change to the product lists.” *Id.* at 4.

Public Representative. The Public Representative supports elimination of the Federal Register publication requirements but does not support removal of provisions that require the Commission to provide an opportunity or specified period for public comment. Public Representative Comments at 1. She contends the proposals concerning the public comment provisions were not clearly explained and voices agreement with PostCom’s concerns on preserving the comment requirement. *Id.* at 6-7.

Postal Service. The Postal Service recognizes the large quantity of proposed Mail Classification Schedule changes considered by the Commission each year and the substantial administrative burden and expense associated with publishing Federal Register notices associated with each proposal. Postal Service Comments at 1. The

² The Postal Service is already statutorily required to independently notice its requests to change the product lists in the Federal Register. See 39 U.S.C. § 3642(d)(1).

³ Comments of the Association for Postal Commerce, February 26, 2016 (PostCom Comments); Public Representative Comments on Proposed Amendments to 39 C.F.R. Part 3020, February 26, 2016 (Public Representative Comments); and Initial Comments of the United States Postal Service, February 26, 2016 (Postal Service Comments).

Postal Service asserts that the approach described in the rulemaking to alleviate the burden appears reasonable. *Id.*

III. COMMISSION ACTION

The Commission has considered the comments and has concluded that no action will be taken at this time to amend the rules appearing in 39 C.F.R. part 3020. While the Postal Service does not oppose the amendments to the rules, PostCom and the Public Representative present persuasive arguments for preserving the explicit requirement to provide an opportunity to comment within the Commission's rules. Given this conclusion, continuing to provide notice of the opportunity to comment in a Federal Register notice also appears appropriate.

The Commission concludes that the proposed rule amendments might be appropriate in some situations but not in others. The vast majority of Postal Service requests filed pursuant to 39 C.F.R. part 3020 affect only a limited number of participants and do not significantly impact the mailing community in general. For these cases, Federal Register notice may not be necessary because interested parties already have actual notice. In addition, comments are seldom received from the mailing community because of the minimal impact of these requests on the mailing community.

However, as PostCom argues, there are instances where Postal Service requests filed pursuant to 39 C.F.R. part 3020 have widespread impact, and participant input may better inform Commission decision-making. See PostCom Comments at 3. The Commission or interested persons do not know, *a priori*, the impact of a proposal until it is filed with the Commission and reviewed. Similarly, the Commission's rules do not attempt to distinguish Postal Service requests for those that may have a substantial impact from those that do not. This has persuaded the Commission to preserve the *status quo* and make no changes to the Federal Register notice and comment requirements.

With the expectation of hundreds of requests being filed by the Postal Service pursuant to 39 C.F.R. part 3020 annually, the Commission will continue to explore ways

to increase efficiency that do not require a change in rules or sacrifice transparency or accountability. For example, the Commission may explore combining Federal Register notices for all requests received on any given day. Docket No. RM2016-5 is hereby closed.

IV. ORDERING PARAGRAPH

It is ordered:

Docket No. RM2016-5 is hereby closed.

By the Commission.

Stacy L. Ruble
Secretary